



Paper No. 8

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Mark R. Schroeder
Application No. 09/819,040
Filed: April 23, 2001
Attorney Docket No. 0336FV-044008

**DECISION GRANTING
PETITION**

This is a decision on the petition filed May 7, 2001, requesting that a Continued Prosecution Application (CPA) filed April 23, 2001, based on prior application No. 09/589,386 be treated as an application under 37 CFR 1.53(b) and accorded a filing date of April 23, 2001.

A review of the prior application failed to uncover application papers for a CPA on April 23, 2001. Accordingly, petitioner was asked to supply evidence that an application under 37 CFR 1.53(d) was, in fact, filed on April 23, 2001. On July 16, 2001, petitioner submitted, inter alia, a copy of the CPA papers, a copy of the post card indicating receipt in the PTO on April 23, 2001 of a CPA filed pursuant to 37 CFR 1.10, and a copy of Express Mailing Receipt No. EL846806863US, showing a "date in" on April 23, 2001. The same Express Mail number appears on the CPA request and post card receipt.

In view of the above, the evidence is convincing that a CPA based on prior Application No. 09/589,386 was filed on April 23, 2001, and subsequently misplaced in the PTO. However, this is not a proper filing under 37 CFR 1.53(d), since a proper CPA under 37 CFR 1.53(d) must be filed before payment of the issue fee in the prior application. See 37 CFR 1.53(d)(1)(ii)(A). In this case, the issue fee was paid on February 26, 2001, and the prior application issued as US Patent No. 6,225,522 on May 1, 2001.

The present petition requests that the request for a CPA be treated as a divisional application filed under 37 CFR 1.53(b). A copy of a specification drawings and declaration accompanied the petition.

The petition is granted.

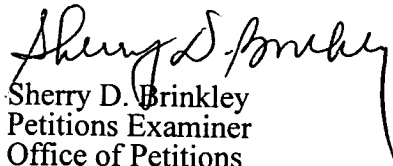
The divisional application under 37 CFR 1.53(b) has been assigned application No. 09/819,040. All further correspondence concerning the divisional application filed on April 23, 2001, should be directed to application No. 09/819,040.

The \$710.00 CPA filing fee paid in Application No. 09/589,386 has been reapplied to Application No. 09/819,040.

Application No. 09/819,040 is being forwarded to Initial Patent Examination Division for processing as a divisional application under 37 CFR 1.53(b), not as a CPA under 37 CFR 1.53(d).

with a filing date of April 23, 2001, using the copy of the specification, drawings and declaration filed May 7, 2001.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-9220. Telephone inquiries related to OIPE processing should be directed to their hotline at (703) 308-1202.



Sherry D. Brinkley
Petitions Examiner
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Office of the Deputy Commissioner
for Patent Examination Policy